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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~754~~ 25

HOWARD JOSEPH WHITEHILL,
Appellant,

v.

WILSON ELKINS, PRESIDENT, UNIVERSITY OF MARYLAND,
AND
BOARD OF REGENTS OF THE
UNIVERSITY OF MARYLAND,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

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The Daily Record Co., Baltimore, Md. 21203

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IN THE

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OCTOBER TERM, 1966

No. 754

HOWARD JOSEPH WHITEHILL,
Appellant,

v.

WILSON ELKINS, PRESIDENT, UNIVERSITY OF MARYLAND,
AND
BOARD OF REGENTS OF THE
UNIVERSITY OF MARYLAND,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

STATUTE, RULES AND REGULATIONS INVOLVED

The provisions of the law involved in this case are the Maryland Subversive Activities Act of 1949, Article 85A, Annotated Code of Maryland (1957 Edition) and "Certification of Applicant for Public Employment", promulgated thereunder, which said statute and certification are fully set forth in the Appendix to Appellant's Brief.

QUESTIONS PRESENTED

1. Is *Gerende v. Board of Supervisors of Elections*, 341 U.S. 56 (1951), controlling under the facts of this case, or should *Gerende* be overruled as a basis for upholding the validity of Maryland's "Certification of Applicant for Public Employment", which certification Appellant refused to execute in the form required by Maryland law as a pre-condition of public employment?

2. Is Maryland's "Certification of Applicant for Public Employment" unconstitutionally vague and indefinite, and therefore in violation of due process of law?

3. Does the severability clause in the Maryland Subversive Activities Act of 1949 permit Maryland's requirement of a "Certificate of Applicant for Public Employment" to be limited in wording so as to conform to constitutional requirements announced by this Court in recent decisions?

4. Does Maryland's loyalty "Certification", which is required of all public employees and applicants for public employment, unconstitutionally infringe the freedoms of expression, belief, association and academic freedom in violation of the First and Fourteenth Amendments to the United States Constitution?

5. Does Maryland's requirement that applicants for public employment execute the "Certification of Applicant for Public Employment" infringe upon freedom of expression, belief and association, for lack of adequate procedural safeguards, by denying public employment without affording a hearing on the issue of loyalty or subversiveness and by shifting the burden of proof of loyalty onto applicants, in violation of due process of law?

6. Does Maryland's "Certification of Applicant for Public Employment" constitute a bill of attainder in violation of Article 1, Section 10 of the United States Constitution?

STATEMENT

This is a direct appeal from the final judgment and order entered on September 8, 1966 by the United States District Court for the District of Maryland, specially constituted as a Three Judge Court, dismissing Appellant's complaint which sought to enjoin the Appellees from requiring the Appellant to execute a "Certification of Applicant for Public Employment", as a condition precedent to employment by the Appellees. The Appellant, a university lecturer in creative writing, applied to the University of Maryland for a position as visiting lecturer in English during the academic year of 1966-67. During contract negotiations, Appellant made it clear that he would refuse to execute a so-called loyalty pledge required by the University entitled "Certification of Applicant for Public Employment". The University thereupon declined his appointment on the basis of his refusal to sign the certification as a condition precedent to his appointment.

The "Certification of Applicant for Public Employment" which the Appellant refused to sign reads as follows:

> "I, ... do hereby certify that I am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence.
>
> "I further certify that I understand the aforegoing statement is made subject to the penalties of perjury prescribed in Article 27, Section 439 of the Annotated Code of Maryland (1957 Edition)."

No oath or affirmation is required. The Maryland certification is not strictly a loyalty oath, does not call for an oath of allegiance and merely requires certification that the applicant is not engaged in an attempt to overthrow

the Government. The present form of the oath was prescribed by the Attorney General of Maryland as being the maximum certification required by the Maryland Subversive Activities Act of 1949, Article 85A, Annotated Code of Maryland, 1957 Edition, in the light of recent decisions of this Court. The latest revision of the Maryland loyalty pledge was officially prescribed by the Attorney General in a letter dated May 13, 1966 to Governor J. Millard Tawes, a copy of which letter is included in the Appendix hereto.

ARGUMENT

THE QUESTIONS ARE UNSUBSTANTIAL AND UNWORTHY OF FURTHER REVIEW BECAUSE THE QUESTIONS HAVE BEEN FULLY ADJUDICATED IN PRIOR DECISIONS OF THIS COURT.

General Considerations

Throughout his presentation to the Court below and in his appeal to this Court, Appellant has consistently sought broadside review and condemnation of the Maryland Subversive Activities Act of 1949, (hereinafter referred to as "the Act"), in complete disregard of the limited requirements placed upon him by that Act as the same had been interpreted by the Maryland Attorney General, the Maryland Court of Appeals (*Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332) and by this Court (*Gerende v. Board of Supervisors of Elections, supra*). Even in his "Questions Presented" the Appellant has sought to obtain review by and separate rulings from this Court on the constitutionality of the Maryland Subversive Activities Act of 1949, absent the requirements of that Act applicable to the Appellant under the facts of this case. Unenforced portions of a statute containing broad severability provisions do not constitute a justiciable controversy worthy of the attention of this Court. Consequently, the "Questions Presented" of the Appellant have been restated above to state the

actual issues sought to be presented to this Court lest any member of this Court be confused by the manner in which the questions have been presented by the Appellant.

Further, if indeed *Gerende* is controlling, as the Court below has indicated is the case, none of the subsidiary issues presented by the Appellant need further elaboration.

A. *GERENDE* IS CONTROLLING UNDER THE FACTS OF THIS CASE, AND THERE IS NO SUBSTANTIAL BASIS FOR THIS COURT'S CONSIDERATION OF OVERRULING *GERENDE*.

In *Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332 (1950), *appeal dismissed*, 340 U.S. 881, the Act was attacked as unconstitutional on a number of grounds, including contentions that it abridged the fundamental rights of freedom of speech, press and assembly, that it was unconstitutionally vague and therefore violative of due process; that it was a bill of attainder and that it attempted to establish guilt by association. In that case, a candidate for election to a municipal office had declined to execute the loyalty oath required by Section 15 of the Act, and, accordingly, his name was eliminated from the ballot. After noting the factual recitals in the preamble of the Act, and finding therein a sufficient basis of necessity for the passage of the Act, the Court held the Act constitutional, stating, *inter alia*, as follows (at page 192):

> "The purpose of Section 11 of Article 15 of the Constitution, and of Chapter 86 of the Acts of 1949, is the same and they are to be construed together to effect that purpose. That is to prevent infiltration in our state, county, or municipal governments of persons who are engaged in one way or another in the attempt to overthrow the government *by force or violence*. We construe the affidavit required by Sec. 15 with respect to those desiring to become candidates for public office as a means of preventing such infiltration at its initial

stage, thereby preventing confusion among the electors and that it is, in no sense, an additional oath of office."

The court additionally noted (page 192):

"An act passed by the Legislature for such a purpose comes to us 'encased in the armor wrought by prior legislative deliberation.' *Bridges v. California,* 314 U.S. 252, at page 261, 62 S. Ct. 190 at page 193, 86 L. Ed. at page 202, approved and quoted in *American Communications Association v. Douds,* 339 U.S. 382, 401, 70 S. Ct. 674, 685, 94 L. Ed. 925, 945, to which is added by Chief Justice Vinson, who delivered the opinion in the latter case, the words: 'The deference due legislative determination of the need for restriction upon particular forms of conduct has found repeated expressions in this Court's opinions.' The purpose of Chapter 86, as shown by its title and throughout its provisions, is not to restrict freedom of speech or thought, nor does it do so."

The judgment of the Court of Appeals of Maryland in *Shub,* sustaining the validity of the Maryland loyalty oath, was *unanimously* affirmed by the Supreme Court of the United States in *Gerende v. Board of Supervisors of Elections, supra,* as follows:

"We read this decision to hold that to obtain a place on the Maryland ballot a candidate need only make oath that he is not a person who is engaged 'in one way or another in the attempt to overthrow the government by *force or violence,*' and that he is not knowingly a member of an organization engaged in such an attempt. At the bar of this Court the Attorney General of the State of Maryland declared that he would advise the proper authorities to accept an affidavit in these terms as satisfying in full the statutory requirement. Under these circumstances, and with this understanding the judgment of the Maryland Court of Appeals is affirmed."

This Court denied a rehearing in *Gerende*, 341 U.S. 923 (1951). *Gerende* has consistently received the approval of this Court. See *Cramp v. State Board of Public Instruction*, 368 U.S. 278 (1961); *Adler v. Board of Education*, 342 U.S. 485 (1952). With respect to the Maryland loyalty certification under consideration here, *Gerende* has not been overruled, either expressly or by implication. Appellant's contention that *Gerende* is no longer the law is predicated primarily upon the cases of *Baggett v. Bullitt*, 377 U.S. 360 (1964), and *Elfbrandt v. Russell*, 384 U.S. 11 (1966). Neither of these cases involved a loyalty certification as restricted in its wording as that required by Maryland.

B. MARYLAND'S CERTIFICATION OF APPLICANT FOR PUBLIC EMPLOYMENT DOES NOT VIOLATE DUE PROCESS OF LAW.

This Court need look no further than *Gerende* to conclude that the Maryland Certification in question is not unconstitutionally vague, since it is for all purposes here material the precise oath upheld as constitutional in that case. In this connection, it is to be noted that the Supreme Court has since *Gerende* alluded to that case as an example of a valid loyalty certification. See *Cramp v. State Board of Public Instruction, supra; Adler v. Board of Education, supra.*

In recent years, the test for determining whether a so-called loyalty oath is unconstitutionally vague has turned on whether the oath is lacking in "terms susceptible of objective measurement." This test originated in the *Cramp* case, supra, and was restated in *Baggett, supra,* where, at page 367, the Supreme Court held that the 1955 Washington oath "suffers from similar infirmities" as the Florida oath invalidated in *Cramp*. The Florida oath required a teacher to swear that he had never lent his "aid, advice, counsel or influence to the Communist Party." In finding

that the oath was lacking in terms susceptible of objective measurement, the Court, after pointing out certain defects of vagueness in the oath, remarked most significantly that the oath "says nothing of advocacy of violent overthrow of State or Federal Government". 368 U.S. at 286. Thus, the Court clearly inferred that had the oath been based on advocacy of violent overthrow of the Government, it would have met the test of "terms susceptible of objective measurement." That the Maryland loyalty certification is, in fact, based on such terms, is clearly beyond doubt, viz:

> "I, ..., am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence."

Hence, the Florida oath was voided on vagueness grounds because it did not utilize the specific terms contained in the Maryland certification, which clearly meets the Supreme Court's vagueness test outlined in *Cramp* and *Baggett*.

Further proof that the Maryland loyalty certification in issue is not vague is readily found in *Adler v. Board of Education, supra,* where New York's Feinberg Law establishing criteria for elimination of subversives from the public schools, was attacked as being unconstitutionally vague. The definition of a "subversive organization" there in question was one that "teaches and advocates the overthrow of the government by force or violence." 342 U.S. at 496. The Supreme Court upheld the definition as not vague, stating that the word "subversive" is one which sets forth a "very definite meaning." 342 U.S. at 496. Thus, once again the Court articulated that such a definition, dealing with overthrow of government by force or violence, is in no sense vague.

Appellant contends that since the definition of a "subversive person" in *Baggett* was declared unconstitutionally vague, and that since this definition is similar to the one contained in Sections 1 and 13 of the Ober Act, the present Maryland loyalty certification is likewise invalid. Nowhere in the present loyalty certification, however, is the word "subversive" mentioned, nor is that certification couched in the language of the statement provided for in Section 13.

It is important to note that Appellant has not been asked to certify that he is not a "subversive person", as defined in the Maryland Act, and whether he falls within the terms of Section 13, or whether the definition in question is any longer valid, is simply not relevant to the present case. Appellant has no standing to challenge any certification other than that which he declined to execute, since only that certification is necessarily involved in this litigation. See *Gerende, supra.*

As heretofore indicated, the Supreme Court in *Gerende* upheld the Maryland loyalty certification presently in use, expressly finding the same in no wise vague, on the basis that it had been interpreted by the highest court of the State to require only an oath that the subscriber is not a person who is engaged in one way or another in the attempt to overthrow the government by force or violence. This judicial construction of Maryland's loyalty certification requirement is determinative of its breadth and scope and establishes its meaning and application. The significance of dealing with interpretation, rather than mere literal language, was manifested in *Baggett,* where it was contended that the definition of "subversive person", which was there voided, was, in fact, virtually the same as the definitions upheld in *Gerende,* and also in *Dennis v. United States,* 341 U.S. 494 (1951), where Section 2 of the Smith

Act was challenged as vague. The *Baggett* Court pointed out that *Gerende* rested on the Maryland Court of Appeals interpretation of the Maryland law which "did not pass upon or approve the definitions of subversive person and organization." 377 U.S. at 368, note 7. Likewise, the *Baggett* Court pointed out that in *Dennis* it was interpretation that saved the statute from the vice of unconstitutional vagueness; that is, since it was a federal statute, the Court could interpret and sustain the statute on the construction that the activity proscribed was "teaching and advocacy of action for the accomplishment of [overthrowing or destroying organized government] by language reasonably and ordinarily calculated to incite persons to such action * * * as speedily as circumstances would permit." 377 U.S. at 370. It is particularly to be observed that the Supreme Court was most cautious to point out in *Baggett* that the Smith Act is still valid because of the saving construction the Court gave it in *Dennis*.

Nor can Appellant find support in *Elfbrandt v. Russell, supra*, for the proposition that the Maryland loyalty certification is unconstitutionally vague. There, the Court voided an Arizona oath subjecting an individual to a perjury prosecution and discharge from public office if he took the oath and "knowingly and wilfully becomes or remains a member of the Communist Party * * * or any other organization having for one of its purposes the overthrow of the Government * * * or the employee had knowledge of the unlawful purpose." The *Elfbrandt* Court struck down the Arizona oath because there existed within its terms the "hazard of being prosecuted for knowing but guiltless behavior." 384 U.S. at page 16. The Court there clearly pointed out that the Arizona law failed to require a specific intent to further illegal ends; consequently, it rested on the doctrine of guilt by association and, thereby,

infringed on the freedom of political association. The Court succinctly stated:

> "A law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."

Consistent with the Supreme Court's decision in *Elfbrandt*, the phrase "and that I am not knowingly a member of an organization engaged in such an attempt" (formerly used as a part of the Maryland certification, and included within the certification's provisions in *Gerende*, was removed from the Maryland loyalty certification. The result is, therefore, that the defect in the Arizona oath of proscribing mere knowing membership, without requiring specific intent, has been eliminated from the Maryland loyalty certification. There is no guilt by association problem because there is no association mentioned from which any guilt may be inferred. Instead, the present Maryland loyalty certification clearly rests solely on a specific attempt to violently overthrow the Government, by force or violence. No association is specified; no knowing membership is punished.

C. THE "CERTIFICATION OF APPLICANT FOR PUBLIC EMPLOYMENT" REQUIRED BY THE STATE OF MARYLAND DOES NOT VIOLATE APPELLANT'S CONSTITUTIONAL GUARANTEES OF FREEDOM OF SPEECH, EXPRESSION, BELIEF OR ASSOCIATION.

It is, of course, well settled that the constitutional right of liberty of speech is subject to reasonable regulations as are necessary to promote and preserve the public welfare and safety. It is equally well settled that the State may require, as a condition of employment with it, that individuals seeking such employment execute a valid loyalty

certification, such requirement being a reasonable regulation to protect the State service, to establish an employment qualification of loyalty to the State, and to the United States. *Garner v. Board of Public Works*, 341 U.S. 716 (1951); *Gerende v. Board of Supervisors of Elections, supra; American Communications Association v. Douds*, 339 U.S. 382. More specifically, as stated in Garner, at page 720:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low position in private industry and are not less relevant in public employment. . . ."

See also *Adler v. Board of Education, supra*, and *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), upholding the constitutionality of the congressional enactment restricting political activity of Federal Civil Service employees.

The right of the State to require a proper certification of loyalty has been expressly upheld even in those cases where particular oaths have been declared unconstitutionally vague. See *Baggett v. Bullitt, supra*, at page 379, wherein it is noted:

> "As in *Cramp v. Board of Public Instruction, supra*, we do not question the power of a State to take proper measures safeguarding the public service from disloyal conduct."

As even more succinctly stated by Mr. Justice Frankfurter in *Garner*, in his separate concurring opinion, at page 725:

> "... No unit of government can be denied the right to keep out of its employ those who seek to overthrow the government by force or violence ...."

Appellant, as an applicant for public employment in Maryland, declined to subscribe to the statement that "I am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence".

Having determined that this certification is not unconstitutionally vague, it can hardly be denied that it constitutes a valid standard of qualification and eligibility for public employment by seeking, as it does, to prevent employment of persons engaged in an attempt to overthrow the government by force or violence.

The case of *Speiser v. Randall*, 357 U.S. 513 (1958) manifests the significance of this different purpose. There, a loyalty oath was required as a condition for eligibility for a veteran's tax exemption. The Supreme Court struck down this provision on the ground that its enforcement would place the burden of proof of nonadvocacy of violent overthrow on the taxpayer and as such would violate due process. The Court was careful, however, to delineate the differences between the *Speiser* situation, where the oath was used to penalize people for holding certain ideas, and situations where, as here, a loyalty certification is required only as a condition for public employment. Referring to the *Garner*, *Gerende*, and *Douds* cases, *supra*, the Court said:

> "In these cases however there was no attempt directly to control speech but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern. . . . The principal aim of those statutes was not to penalize

political beliefs but to deny positions to persons supposed to be dangerous because the position might be used to the detriment of the public." 357 U.S. at 527.

Likewise, the Court made manifest the distinctions on the burden of proof issue:

> "In the earlier cases . . . the loyalty oath once signed became conclusive evidence of the facts attested so far as the right to office was concerned. If the person took the oath he retained his position. The oath was not part of a device to shift to the office holder the burden of proving his right to retain his position. The signer, of course, could be prosecuted for perjury, but only in accordance with the strict procedural safeguards surrounding such criminal prosecutions. In the present case, however, it is clear that the declaration may be accepted on the basis of incompetent information or no information at all. It is only a step in a process throughout which the taxpayer must bear the burden of proof."

In *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961), the Court was careful to demonstrate that the *Speiser* principle was limited to where there was intent to penalize certain beliefs and to effectuate such attempt by placing the burden of proof of nonadvocacy of violent overthrow on the Plaintiff. There, the Court upheld California's right to deny admission to the practice of law to an individual who refused to answer the bar examining committee's questions pertaining to membership in the communist party. The Court said at page 54:

> "*Speiser* was explicitly limited so as not to reach cases where, as here, there is no showing of an attempt to penalize political beliefs."

The Court also found that the burden of proof had not been shifted to petitioner merely because he was required to

testify before the committee and to submit to discovery in order to become a member of the bar. 366 U.S. at 55.

Furthermore, the Maryland certification is no more constitutionally offensive than a requirement common to many job applications that the applicant state whether or not he has a venereal disease or a mental or nervous disorder.

That Appellant, should he seek public employment, be required to certify that he is not engaged in an attempt to overthrow his prospective employer, by force or violence, would hardly appear to violate anyone's religious freedom. It is not clear from the record just how the Maryland certification offends Appellant's religion or belief, and he has failed to allege any specific facts showing in what precise way his religious beliefs would be infringed by the requirement that he execute the Maryland Loyalty Certification. He only states that the requirement is offensive and insulting.

Appellant apparently relies on *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) to support his contention of violation of religious beliefs. In that case school children were required by State law to salute the flag. An objection was registered by a Jehovah's Witness on the ground that he considered the flag "an image" which he was forbidden by the Bible to pay homage. The Court found that the salute requirement was trivial to the welfare of the State and, consequently, that the infringement on freedom of religion was not there justified. In the present case, however, the purpose of the Maryland Loyalty Certification is far more crucial than merely compelling good citizenship — it is to safeguard the State from internal disorder. But even if the desired ends were not more substantial than in *Barnette*,

Appellant has here failed utterly to allege what precept, if any, of his Quaker religion has in fact been offended. The *Barnette* Plaintiffs believed in a biblical command not to pledge allegiance to the flag. No similar command of Appellant's religion is cited as being violated by the Loyalty Certification.

Appellant's challenge to the Maryland loyalty certification on the basis that it infringes his academic freedom is novel indeed. There is no such freedom protected by the United States Constitution, and even if there were, it is doubtful that the Appellant has standing to raise the issue inasmuch as he has initiated this litigation as a class action on behalf of public employees of the University of Maryland (or the State — it is not clear which), most of whom cannot claim special dispensation on the basis of so-called "academic freedom".

D. THE "CERTIFICATION OF APPLICANT FOR PUBLIC EMPLOYMENT" REQUIRED BY THE STATE OF MARYLAND DOES NOT CONSTITUTE A PROHIBITED BILL OF ATTAINDER IN VIOLATION OF THE UNITED STATES CONSTITUTION.

The contention that loyalty certifications are prohibited Bills of Attainder is completely answered by the Supreme Court in *Garner v. Board of Public Works, supra.* In that case, the Court, after careful analysis, concluded that loyalty oaths, as a condition for public employment, were not Bills of Attainder. There, an oath of non-advocacy of violent overthrow of government, together with an affidavit regarding Communist Party affiliations, were required of municipal employees. In holding that such requirement did not constitute a Bill of Attainder, the Court said at page 722:

> "Punishment is a prerequisite for a bill of attainder," and, "We are unable to conclude that punishment is

imposed by a general regulation which merely provides standards of qualification and eligibility for employment."

The Court distinguished *Cummings v. Missouri*, 4 Wall 277 (1867) and *Ex Parte Garland*, 4 Wall 333 (1867), which had avoided certain oaths as Bills of Attainder. The Court found these cases inapplicable "when the Legislature establishes reasonable qualifications for a vocational pursuit * * *". 341 U.S. at 723. The principle being articulated was clear: the prohibition against Bills of Attainder does not mean that the Legislature cannot prescribe standards for public or professional employment. Consequently, an oath required in order to be a public employee does not impose a penalty without judicial trial. See also *Konigsberg v. State Bar of California, supra; American Communications Ass'n v. Douds, supra; Shub v. Simpson, supra; Keyishian v. Board of Regents*, 255 F. Supp. 981 (W.D. N.Y., Jan. 5, 1966) *prob. juris, noted*, 384 U.S. 998 (1966).

CONCLUSION

For the foregoing reasons, the Appellant has not presented to this Court any substantial constitutional questions not previously fully considered by this Court, has raised no novel issues worthy of this Court's consideration, and has not shown any significant deprivation of his individual rights protected by the Constitution. Therefore, the Appellees submit that the judgment of the Court below is correct and should be affirmed.

Respectfully submitted,

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APPENDIX

State of Maryland
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May 13, 1966

The Honorable J. Millard Tawes
Governor of the State of Maryland
State House
Annapolis, Maryland 21404

Dear Governor:

As you may know, on April 18, 1966, the Supreme Court of the United States, dividing 5-4, in *Elfbrandt v. Russell*, 34 L.W. 4347, struck down as unconstitutional the Arizona loyalty oath required of public employees of that State and its political subdivisions. The Arizona statute subjected to prosecution for perjury and discharge from public office anyone who took the oath and who "knowingly and willfully becomes or remains" a member of the Communist Party, or "any other organization" having for "one of its purposes" the violent overthrow of the State government, or any of its political subdivisions, where the employee had knowledge of the unlawful purpose.

The Supreme Court declared that:

> "A law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."

In light of the *Elfbrandt* decision, the Maryland Loyalty Pledge has been modified, by eliminating the words "and I am not knowingly a member of an organization engaged in such an attempt", to read as follows:

"I, ... do hereby certify that I am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence.

"I further certify that I understand the aforegoing statement is made subject to the penalties of perjury prescribed in Article 27, Section 439 of the Annotated Code of Maryland (1957 edition)."

This office is advising the Secretary of State and the Commissioner of Personnel of the modified loyalty pledge devised by this office to meet the constitutional standards required by the decision in the Arizona case.

We are also advising the legal officers of all of Maryland's political subdivisions of the modification, with the suggestion that they recommend to their governing bodies that the County oath, where different, be made to conform to the State oath.

With kind personal regards, I remain

Sincerely,

THOMAS B. FINAN,
Attorney General.